



राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, बीरवार, २६ फरवरी, १९९८/७ फाल्गुन, १९१९

हिमाचल प्रदेश सरकार

निर्वाचन विभाग

अधिसूचना

शिमला-१७१००२, २९ जुलाई, १९९७

सं० ३-१२/९७-ई० एल० एन०.—भारत निर्वाचन आयोग की अधिसूचना संख्या ८२/हि० प्र०-लो० स०/१/९६, दिनांक ८ जुलाई, १९९७ तदनुसार १७ अप्रैल, १९१९ (शक्), अंग्रेजी रूपान्तर सहित, जिसमें हिमाचल प्रदेश उच्च-न्यायालय, शिमला का निर्वाचन अर्जी संख्या १ वर्ष १९९६ का निर्णय निहित है, को जनसाधारण की सूचना हेतु प्रकाशित किया जाता है।

आदेश द्वारा,

हस्ताक्षरित/-
मुख्य निर्वाचन अधिकारी।

भारत निर्वाचन आयोग

नई दिल्ली,

8 जुलाई, 1997

दिनांक—

17 आषाढ़, 1919 (शक.)

अधिसूचना

सं० 82/हि० प्र०-लो० सं० 1/96.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग 1996 की अर्जी संख्या 1 में शिमला स्थित हिमाचल प्रदेश उच्च न्यायालय के तारीख 10 जून, 1997 के निर्णय को एतद्वारा प्रकाशित करता है।

आदेश से,

(के० जे० राव)

सचिव,

भारत निर्वाचन आयोग।

ELECTION COMMISSION OF INDIA

New Delhi,

Dated the 8th July, 1997

17 Ashadha 1919 (Saka)

NOTIFICATION

No. 82/HP-HP/1/96.—In pursuance of section 106 of the Representation of the People Act 1951 (43 of 1951), the Election Commission hereby publishes Judgement dated 10th June, 1997 of the High Court of Himachal Pradesh at Shimla in Election Petition No. 1 of 1996.

By ord r,

Sd/-

(K. J. RAO),

Secretary,

Election Commission of India.

IN THE HIGH COURT OF HIMACHAL PRADESH

Election Petition No. 1 of 1996

Misc. Petition No.Writ Petition No.Appeal No.Revision Petition No.Civil Suit No.

Date of Decision June, 10, 1997

Prem Kumar Dhumal

Versus

Petitioner.

Major General Bikram Singh

.. Respondent.

Coram :

The Hon'ble Mr. Justice

A. L. VAIDYA, J.

The Hon'ble Mr. Justice

The Hon'ble Mr. Justice

Whether approved for reporting ?

Yes

For the Appellant(s)/Petitioner(s)

M/s S. P. Jain, R.K. Sharma,

For the Respondent(s)

Mrs. Shubh Mahajan, Advocate.

Mr. M. S. Chandel, Advocate.

PER A. L. VAIDYA, J.

The elections for 4—Hamirpur Parliamentary Constituency were held in April 1996 and the polling took place on 27th April. 1996. The petitioner unsuccessfully contested this election as a candidate of Bhartiya Janata Party while the respondent was the successful candidate who contested as a nominee of the Congress Party.

2. Through the present petition preferred under sections 80/100 read with section 123 of the Representation of the People Act, 1950 (hereinafter to be called as "the Act"), the petitioner has prayed that the election of respondent Major General Bikram Singh (Retd.) from Hamirpur Parliamentary Constituency may be declared as null and void and it has further been prayed that the respondent be disqualified from contesting any election for a period of six years, as per law. The said prayer has been based on the sole ground that the respondent was guilty of corrupt practices as defined under Section 123 of the Act. The details of corrupt practices practised by the respondent may not be necessary to be pointed out at this stage which otherwise would be taken note of later on.

3. This petition has been seriously contested on behalf of the respondent and the averments made regarding the alleged corrupt practices practised by the respondent have been denied.

4. On the pleadings of the parties various issues were framed which were so claimed by the learned counsel for the parties.

5. Issues No. 5 and 6, being preliminary issues, have been taken up at the first instance, to be disposed of, which run as under :

"5. Whether the affidavit filed by the petitioner is wrong, illegal and not in accordance with law, as alleged ? If so, the petition is liable to be rejected ? ..OPR

6. Whether the petition does not disclose any enforceable cause of action, as alleged ? ..OPR"

6. Learned counsel for the parties have been heard and the relevant pleadings, coupled with the record, have been considered.

7. The findings on these two preliminary issues are as follows :

ISSUE NO. 5 :

8. This issue has not been pressed on behalf of the respondent and, accordingly, the same is decided in the negative.

ISSUE NO. 6:

9. This is the most vital issue which, in detail, has been argued on behalf of the parties.

10. There is no dispute to the proposition that in order to dispose of this issue on the basis of the submissions put forth by the learned counsel, only the allegations made in the petition have to be looked into and those relevant pleadings can safely be detailed at this stage. For the sake of convenience paragraphs 7,8,9,10,11,12, 13 and 14 are being reproduced hereunder :

"7. That the elections of the respondent, Major General Bikram Singh (Retd.) is liable to be set aside and declared as void and illegal on the ground that he is guilty of corrupt practice under section 123 of the Representation of People Act, 1951 (hereinafter to be called as the Act).

8. That the maximum limit of election expenditure, as prescribed for the elections of the Lok Sabha in Himachal Pradesh, is Rs. 4,15,000/- for each Parliamentary Constituency. However, the respondent has spent much more than the maximum limit as authorised and prescribed in the elections. The respondent in his return of election expenditure has shown the total expenses incurred by him in the election as Rs.3,28,246/-. An attested copy of the said return, along with the copy of the affidavit sworn and filed by the respondent in support of the return are enclosed herewith as Annexures P 1 and P2. The respondent has not submitted the true and correct return of this election expenditure and he has spent more amount than the maximum authorised limit.

9. That Shri Virbhadra Singh, the Chief Minister of Himachal Pradesh, with the consent of the respondent used the Helicopter for campaigning, canvassing and electioneering work for securing votes for the respondent, in the constituency, with a view to win the election. In the return Annexure P1, the total expenditure of Helicopter used on 2nd April, 1996 is shown as Rs. 32,292.00. In the return, it has been mentioned that this expenditure is shown on the basis of voucher No. 45, but voucher No. 45 shows that an amount of Rs. 39,292.00 was to be credited in the account of the respondent as expenditure incurred towards the use of Helicopter for Lok Sabha elections in 1996. A copy of voucher No. 45 is enclosed herewith as Annexure-P3.

However, it will be pertinent to mention here that on 2nd April, 1996, the Helicopter took flight from Sarahan (District Shimla), Himachal Pradesh, at 8.40 A.M. and it reached Hamirpur at 9.40 A.M. The charges of Helicopter for one hour flight from Sarahan to Hamirpur were paid as Rs.90,000/-, according to the prescribed rates. This one hour flight from Sarahan to Hamirpur was continuous and with the sole object to canvass and coampaign for the election of the respondent in the Constituency.

The Helicopter was made to halt at Hamirpur from 9.40 A.M. to 3.30 P.M. for which halt charges were charged amounting to Rs. 1,65,999/-. At 3.30 P.M. Shri Virbhadra Singh, in the said Helicopter, left for Dehra and then for Jawalamukhi, which flight took half an hour and the charges of Rs.45,000/- were paid for the same. At Dehra, the Helicopter remained halted for which an amount of Rs.55,000/- was paid. As

such, during the election campaign in 4—Hamirpur Parliamentary Constituency, the respondent has spent a sum of Rs.3,55,000/- towards charges for hiring of Helicopter, while in the return only an amount of Rs.32,000/- has been shown by the respondent. The Helicopter, which is normally used by the State Government, has been taken by it on lease from M/s Masco Airlines, New Delhi, for a period of two years from 25-5-1995. The rate of the flight of the Helicopter has been agreed at Rs. 90,000/- per hour. The information about the lease of the Helicopter and its rates/charges is being given on the basis of the reply tabled on the floor of the Himachal Pradesh Vidhan Sabha in answer to starred question No. 2271 on 11-1-1996 by the Chief Minister. Copies of the question and its answer are enclosed herewith as Annexures P4 and P5 respectively.

As such, the respondent is guilty of filing and submitting an incorrect statement of expenditure. He is further guilty of swearing a false affidavit, which he has enclosed with his expenditure return.

In view of the position explained above, in this para, the respondent has incurred an expenditure in contravention of Section 77 of the Act and this he is guilty of corrupt practice, as mentioned in sub-section (6) of section 123 of the Act.

The petitioner had also addressed a complaint to the Financial Observer, Election Commission, 4—Parliamentary Hamirpur Constituency, on 7th May, 1996, copy of which is enclosed herewith as Annexure P6, along with its typed copy as Annexure-P6/A.

10. That during the election, the respondent has got published advertisements in the various newspapers. He has also got published the tour programme of Shri Virbhadra Singh, the Chief Minister of Himachal Pradesh, in the various newspapers for his canvassing, electioneering work in the Constituency, with a view to win the election. In his return, the total expenditure incurred for newspapers advertisements is Rs.13,770/-, which is shown to have been made on 12th April, 1996.

That as a matter of fact, the respondent has spent the following amounts for getting the advertisements published, in connection with his election campaign, in various newspapers :

Name of News paper	Date	Amount	Share of the respondent
1	2	3	4
		Rs.	Rs.
Punjab Kesari (published by Hind Samachar Ltd) Jullundur.	2-4-1996	15,300	7,200
	6-4-1996	31,875	31,875
	12-4-1996	31,875	13,770
	14-4-1996	40,920	10,230
	17-4-1996	31,875	7,968
	21-4-1996	34,875	34,875
	2-4-1996 } Total amount paid by		
	15-4-1996 } H.P. Congress Com		
	18-4-1996 } mittee is Rs.49,238/-.		
	21-4-1996 }		16,409
	2-4-1996	8,000	3,200
	6-4-1996	8,000	8,000

1	2	3	4
		Rs.	Rs.
	12-4-1996	8,000	2,000
	15-4-1996	8,000	2,000
	17-4-1996	8,000	2,000
	21-4-1996	8,000	5,332
Ajit Samachar	12-4-1996	52,50	885
	15-4-1996	6,160.00	1,565

The bill (voucher) issued by the Hind Samachar Limited to Himachal Pradesh Congress Committee, Shimla, regarding the above mentioned newspaper (Punjab Kesari) is enclosed herewith as Annexure P7. The newspaper cuttings of Punjab Kesari, Published by Hind Samachar Limited, Jullundur, for the dates 2nd, 6th, 12th, 14th, 17th and 21st April, 1996, are enclosed herewith as Annexures P8/A to 8/F respectively.

The bill issued by the Indian Express Newspaper, Bombay Pvt. Ltd., Chandigarh, which publishes Jansatta is enclosed herewith as Annexure P9, along with a copy of letter dated 28-5-1996, which is written by the Himachal Pradesh Congress Committee, to the Advertisement Manager, Jansatta, is enclosed herewith as Annexure P10. The clippings of newspapers (Jansatta), dated 2nd, 15th, 18th and 21st April, 1996, are enclosed herewith as Annexures P10/A to P10/D.

The Virpartap, Jullundur, has issued the bills for the aforesaid publications *vide* bill No. 27005, 27015, 27026, 27048, 27053, 27054 respectively. Clippings of the papers (Vir Partap) are enclosed herewith as Annexures P11/A to P11/F, respectively, for 2nd, 6th, 12th, 15th, 17th and 21st April, 1996.

Bill Nos. 1**C 1492 dated 17-4-1996, is enclosed herewith as Annexure P12, for publication of advertisement in Ajit Samachar. Bill No. 1**C 1562, dated 15-4-1996 is enclosed herewith as Annexure P12/A. Clippings of the papers are enclosed herewith as Annexures P13/A to P13/B, respectively).

11. That the respondent in his return has shown only a sum of Rs.13,770/- for newspapers advertisements on 12-4-1996, though the total amount incurred by him in this behalf, as detailed in para 10 of the petition is Rs. 1,47,309/-.

In view of the position explained in paras 10 and 11 *supra* the respondent has incurred the expenditure in contravention of Section 77 of the Act and he is guilty of corrupt practices as mentioned in sub-section (6) of Section 123 of the Act. As he has supported the return of expenditure with an affidavit and the said affidavit has thus been falsely sworn, therefore, the respondent is also guilty of suppressing the material and correct facts and swearing the false affidavit. Therefore, the election of the respondent is liable to be quashed and set aside.

12. That on the date of counting, that is, on 8th May, 1996, the Assistant Returning Officer, had arranged for the lunch, tea and dinner etc. for the counting agents at different counting centres in the Constituency and they charged Rs.30/- for each counting agent as diet money of 8-5-1996 and the total amount paid by him was Rs. 6300/- which amount has not been shown by the respondent in his expenditure return.

13. Therefore, the respondent has contravened the provisions of Section 77 of the Act and he is guilty of corrupt practices, as mentioned in sub-section (6) of Section 123 of the Act.

That the return Annexure P1, shows that the respondent has shown his expenditure only from 2-4-1996 to 27th April, 1996, while the results were declared on 9th May, 1996, and under Section 77 of the Act, he is required to keep a separate and correct account of all the expenditure incurred in connection with the election from the date of his nomination till the date of declaration of the result. As the petitioner has not shown his expenditure from 27th April, 1996, till 9th May, 1996, though he has paid the amount of diet money on 8th May, 1996, as such, he is guilty of contravening the provisions of Section 77 of the Act and he has committed the corrupt practices under sub-section (6) of Section 123 of the Act, therefore, his election is liable to be quashed and set aside.

14. That during the election, the respondent established his office in the building of M/s Mathra Dass and Sons, known as "Zamindaran Di Hatti", at Hamirpur and there the also got installed the telephone (telephone No. 23909) but in his return of expenditure he has not shown the telephone charges of the aforesaid telephone. The exact amount of the telephone expenses can be calculated on the basis of the difference in the telephone bill during the election and six months prior to that on average basis. Similarly, the telephone expenses relating to the other offices opened by the respondent during election at Bilaspur, Una, Dehra, Ghumerwin have also not been shown by the respondent".

11 Section 100 of the Act deals with the grounds for declaring election to be void. The relevant provisions of Section 100, which would be applicable to the facts of the present case run as under ;

"100 Grounds for declaring election to be void:—

(1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

(a)

(b) that any corrupt practice has been committed by a return candidate or his election agent or by any other person with the consent of a returned candidate or his election agents; or

(c)

(d)

the High Court shall declare the election of the returned candidate to be void."

12 Section 83 of the Act, which deals with the contents of the petition runs as under:—

"83 Contents of petition.—(1) An election petition:—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition".

13 Corrupt practices have been defined under Section 123 of the Act and the relevant provision of this Section, applicable to the facts of the present case, is as under.

"123 *Corrupt practices.*—The following shall be deemed to be corrupt practices for the purpose of this Act:—

- (1)
- (2)
- (3)
- (4)
- (5)
- (6) the incurring or authorizing of expenditure in contravention of Section 77."

14 Section 77 of the Act deals with the account of election expenses and maximum thereof, as provided under the law. This Section runs as under ;

"77 *Account of election expenses and maximum thereof.*—(1) Every candidate at any election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive.—

Explanation.—(1) Notwithstanding any judgment, order or decision of any court, to the contrary, any expenditure incurred or authorized in connection with the election of a candidate by a political party or by any other association or body of persons or by any individual (other than the candidate or his election agent) shall not be deemed to be, and shall not ever be deemed to have been, expenditure in connection with the election incurred or authorized by the candidate or by his election agent for the purposes of this sub-section:

Provided that nothing contained in the Explanation shall affect;—

- (a) any judgment, order or decision of the Supreme Court whereby the election of a candidate to the House of the People or to the Legislative Assembly of a State has been declared void or set aside before the commencement of the Representation of the People (Amendment) ordinance, 1974 (Ord. 13 of 1974) ;
- (b)

Explanation.—For the removal of doubt, it is hereby declared that any expenditure incurred in respect of any arrangements made, facilities provided or any other Act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of Section 123 in the discharge of his official duty as mentioned in the proviso to the clause shall not be deemed to be expenditure in connection with the election incurred or authorized by a candidate or by his election agent for the purposes of this sub-section.

(2) the account shall contain such particulars, as may be prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be prescribed".

15. Apart from the aforesaid provisions of the Act Section 86 (5) of the Act would also be relevant in order to appreciate the submissions put forth on behalf of the parties which runs as under :

86 (5). The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition".

16. In the background of the aforesaid provisions of law it has been very forcefully contended on behalf of the respondent while making submissions under this issue that the petition at this initial stage is liable to be dismissed inasmuch as it does not disclose any reasonably enforceable cause of action as was the requirement of the Act.

17. It has further been argued that the pleadings regarding the alleged corrupt practices practised by the respondent suffer from pleading material facts as per provisions of the Act.

17-A. On the other hand learned counsel for the petitioner has submitted that the petition doesn't suffer for want of material facts and material particulars with respect to the plea of corrupt practice and whatever has been pleaded was legally sufficient to proceed further with the trial of the petition inasmuch as prima facie the pleas raised in the petition call for the trial of those pleadings which have been put to issue to be disposed of on merit.

18. The submissions put forth on behalf of the learned counsel for the parties are not so simple a matter as has been submitted before this Court. In order to appreciate the rival contentions at the first instance the law as provided under the Act and as laid down by various High Court including the apex court of the country, has to be appreciated and taken note of in the background. of the pleadings of the petitioner inasmuch as at this stage, as pointed out earlier, in order to dispose of this issue only pleas taken by the petitioner in the petition have to be considered and appreciated in a legal manner. Learned counsel for the parties have cited certain precedents which would be very much relevant to dispose of the contentions put forth before this Court. The case law cited is being referred at this juncture.

19. *Dhartipakar Madan Lal v. Shri Rajiv Gandhi* (A. I. R. 1987 S. C. 1577), deals with the allegations made with respect to plea of corrupt practice. Paragraphs 14 and 20 of this case are relevant which are reproduced as under :

"The Act is a complete and self contained Code within which any rights claimed in relation to an election or an election dispute must be found. The provisions of the Civil P. C. are applicable to the extent as permissible by 87. The Scheme of the Act would show that an election can be questioned under the statute as provided by S. 80 on the grounds as contained in S. 100 Section 83 lays down a mandatory provision in providing that an election petition shall contain a concise statement of material facts and set forth full particulars of corrupt practice. *The pleadings are regulated by S. 83 and it makes it obligatory on the election petitioner to give the requisite facts, details and particulars of each corrupt practice with exactitude. If the election petition fails to make out a ground under S. 100 it must fail at the threshold.* Allegations of corrupt practice are in the nature of criminal charges, it is necessary that there should be no vagueness in the allegations so that the returned candidate may know the case he has to meet. If the allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings, the trial of the election petition cannot proceed for want of cause of action. The emphasis of law is to avoid a fishing and roving inquiry.

In order to constitute a corrupt practice as contemplated by Ss. 77 and 123 (6) it is necessary to plead requisite facts showing authorisation, or undertaking of reimbursement by the candidate or his election agent. *A mere vague and general statement the candidate*

and his workery with his consent spent money in election in excess of the permissible ceiling would not be sufficient to constitute corrupt practice. After the amendment of S. 77 (1) any expenditure at the election by a political party, sympathisers or friends cannot be held to have been incurred by the candidate or his election agent unless it is shown that the money which they spent belonged to the candidate or his election agent or that he reimbursed the same. It is thus evident that unless the allegations are specific that the candidate or his election agent authorised the expenses before the money was actually spent and that the candidate or his election agent reimbursed or undertook to reimburse the same the necessary ingredient or corrupt practice would not be complete and it would provide no cause of action to plead corrupt practice."

20. *Gajanan Krishnaji Bapat and another v. Dattaji Raghobaji Meghe and others*, [(1955) 5 S. C. C. 347] deals with the factum of corrupt practice, alleged to have been practised by incurring or authorising expenditure in excess of prescribed limits. The following observations made by the apex court, in the aforesaid case, being relevant to the present case are reproduced hereunder :

"Under Section 123 (6) of the Act, the incurring or authorising of expenditure in contravention of Section 77 of the Act amounts to commission of a corrupt practice. However, every contravention of Section 77 of the Act does not fall within the mischief of Section 123 (6). Neither the violation of sub-section (1) nor the violation of sub-section (2) of section 77 amounts to the commission of the corrupt practice under Section 123 (6). However, Section 77 (3) mandate that the prescribed limit and therefore the provisions of Section 123 (6) of the Act are related only to Section 77 (3) of the Act. If a candidate incurs or authorises expenditure in excess of the prescribed limits, he commits the corrupt practice under section 123 (6) of the Act and his election is liable to be set aside and he also incurs the disqualification of being debarred from contesting the next election. From a plain reading of Section 123 (6) and 77 including Explanation 1 to Section 77 of the Act, it is therefore, clear that in order to be a corrupt practice, the excessive expenditure must be incurred or authorised by the candidate or his election agent. An expenditure incurred by a third person, which is not authorised by the candidate or his election agent is not a corrupt practice. Voluntary expenditure incurred by friends, relations or sympathisers of the candidate of the candidates political party are not required to be included in the candidates return of expenses, unless the expenses were incurred in the circumstances from which it could be positively inferred that the successful candidate had undertaken that he would reimburse the party of the person who incurred the expense. A candidate can not be permitted to place his own funds in the power or possession of a political party, an association, or some other persons or individuals for being spent on his behalf and then plead for the protection under Explanation 1 to Section 77 of the Act. Where the election petitioner successfully establishes that the funds were provided by the returned candidate, it would be immaterial as to who actually made the payments, which ought to have been included in the return of election expenses. It is not "whose hand it is that spends the money". The essence of the matter is "whose money it is" that has been spent. In order that Explanation 1 to Section 77 of the Act may apply, therefore, it must be proved that the source of the expenditure incurred was not out of the money of the candidate or his election agent. It is not enough to prove that some advantage accrued to the returned candidate or even that the expenditure was incurred for the benefit of the returned candidate or that it was within the knowledge of the returned candidate and he did not prevent it, to cloth the returned candidate with the liability of committing the alleged corrupt practice. Since during an election, the sponsoring or supporting political parties as well as friends, sympathisers and well-wishers do sometimes incur expenditure not only without the consent of the candidate concerned but even without his knowledge, the successful candidate cannot be clothed with all such expenses to suffer the disqualification.

The legislature by prescribing the inner and the outer limit in Section 77 of the R. P. Act intended the elimination of money influence during the elections and maintaining of purity of elections. The expenditure incurred after the declaration of the result of the election can possibly have no nexus with the party of the electoral process. The very fact that the advertisements thanked the electorate for electing a candidate would show that the same could only have been issued for publication after the declaration of the candidate as the returned candidate. The expenditure incurred in that connection therefore cannot be said to be an expenditure 'authorised' or 'incurred' during the prohibited dates. Indeed, there may be cases where some expenditure can be incurred or authorised by a returned candidate in connection with his election, even after the declaration of the result, but unless that expenditure can be related to the process of election, authorised or incurred during the prohibitory limits set out in Section 77 (1) of the Act. It is not required to be included in the return of expenses. The mere fact that the advertisements appeared in the newspapers on the very next day of declaring the result cannot lead to any presumption that the expenditure in connection therewith had been incurred or authorised by the returned candidate during the prescribed prohibitory dates in anticipation of his being declared elected.

However, the practice followed by political parties in not maintaining accounts of receipts of the sale of coupons and donations as well as the expenditure incurred in connection with the election of its candidate is not a good practice. It leaves a lot of scope for soiling the purity of election by money influence. Even if the traders and businessmen do not desire their names to be publicised in view of the explanation of the witnesses, nothing prevents the political party and particularly a national party from maintaining its own accounts to show total receipts and expenditure incurred, so that there could be some accountability. The practice being followed as per the evidence introduces the possibility of receipts of money from the candidate himself or his election agent for being spent for furtherance of his election, without getting directly exposed, thereby defeating the real intention behind Explanation 1 to section 77 of the Act. It is therefore, appropriate for the legislature or the Election Commission to intervene and prescribe by Rules the requirements of maintaining true and correct account of the receipt and expenditure by the political parties by disclosing the sources of receipts as well. Unless this is done the possibility of purity of elections being soiled by money influence cannot really be ruled out. The political parties must disclose as to how much amount was collected by it and from whom and the manner in which it was spent so that the court is in a position to determine "whose money was actually spent" through the hands of the party. It is equally necessary for an election petitioner to produce better type of evidence to satisfy the court as to "whose money it was" that was being spent through the party. Vague allegations and discrepant evidence may only create a doubt but then the charge of corrupt practice cannot be held to be proved on mere lurking suspicion or doubts."

21. In *Udhav Singh v. Madhav Rao Scindia* (A.I.R. 1976 S.C. 744) the expression "material facts and particulars" has been examined as under:

"All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence, are "material facts". In the context of a charge of corrupt practice, material facts" would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an election petition, a particular fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and the special circumstances of the case. In short, all those facts which are essential to clothe the petitioner with a complete cause of action, are "material facts" which must be pleaded and failure to plead even a single material fact amounts to disobedience of the mandate of Section 83 (1) (a).

"Particulars", on the otherhand, are "the details of the case set up by the party", "Material particulars" within the contemplation of C.I. (b) of saction 83 (1) would therefore mean all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirements of clause (a). "Particulars" serve the purpose of finishing touches to the basic contours of a picture already drawn, to make it full, more detailed and more informative."

22. The following observations in *Duulat Ram Chauhan v. Anand Sharma* (A. I. R. 1984 S. C. 621), which is a case from the State of Himachal Pradesh, would also be relevant in order to dispose of the controversy pending before this Court.

"The allegations of corrupt practice must be so clear and specific that the inference of corrupt practice will irresistibly admit of no doubt or qualm. It cannot be left to time, chance or conjecture for the court to draw an inference by adopting an involved process of reasoning. As a logical consequence it follows that where the allegation of fraudulent practice is open to two equal possible inference, the pleadings of corrupt practice must fail.

In order to constitute corrupt practices, the necessary particulars, statement of facts and essential ingredients that must be contained in the pleadings are:--

- (1) Direct and detailed nature of corrupt practice as defined in the Act.
- (2) Details of every important particular must be stated giving the time, place names of persons, use of words and expressions, etc.
- (3) It must clearly appear from the allegations that the corrupt practice alleged were indulged in by (a) the candidate himself (b) his authorised election agent or any other person with his express or implied consent.

A person may, due to sympathy or on his own, support the candidature of a particular candidate but unless a close and direct nexus is proved between the act of the person and the consent given to him by the candidate or his election agent, the same would not amount to a pleading of corrupt practice as contemplated by law. Thus where it was alleged in an Election petition that to candidates to the election has participated in the rally held by the elected candidate and have shouted libellous slogans but there was nothing to show that they were either the election agents or workers of the elected candidate or that they participated or shouted slogans with the express or implied consent of the elected candidate the allegation would not amount to allegation of corrupt practice. That being so for the failure to join these two candidates as parties to the election petition, the petition could not be rejected under S. 82 (b) read with S. 86."

23. *Mohan Rawale v. Damodar Tatyaba Alias Dadasaheb* (1994 2 S. C. C. 392] has been cited in order to find support to the proposition that so long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case was weak and not likely to succeed was no ground for striking it out. There is absolutely no dispute to this proposition. However, in the aforesaid case the expression "material facts and full particulars" has also been explained and the relevant paras in this behalf, which may be helpful to the present case are paras 8 to 18, which are reproduced hereunder ;

"9. The second contention of Shri Sanghi is that even the allegations in the later paras of the election petition relating to the period after the commencement of the appellant's candidature are vague, bereft of material particulars, frivolous and vexatious and do not disclose a reasonable cause of action. Shri Sanghi submits that Section 86 does

not exhaust the grounds of dismissal of an election petition in limine. An election petition, says counsel, can and ought to be rejected if grounds contemplated by Rule 11 of Order 7 Civil Procedure Code exist. Shri Sanghi's contention really covers three distinct though overlapping, ideas. It raises the question of absence of material particulars, alleges frivolousness and vexatiousness of the pleadings lastly, alleges their inability and insufficiency to disclose a reasonable cause of action.

10. We may take up the last facet first, As Chitty, J observed, "There is some difficulty in affixing a precise meaning to" the expression "discloses no reasonable cause of action or defence". He said: 'In point of law... every cause of action is a reasonable one'. (See Republic of Peru v. Peruvian Guano Co. (1987 36 Ch. D. 489). A reasonable cause of action is said to mean a cause of action with some chances of success when only the allegations in the pleading are considered. But so long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The implications of the liability of the pleadings to be strick out on the ground that it discloses no reasonable cause of action are quite often more known than clearly understood. It does not introduce another special demurrer in a view shape. The failure of pleadings to disclose a reasonable cause of action is distinct from the absence of full particulars. The distinctions among the ideas of the "grounds" in Section 81 (1), of "material facts" in Section (83) (1) (a) and of "full particulars in Section 83 (1) (b) are obvious. The provisions of Section 83 (1) (a) and (b) are in the familiar pattern of Order VI, Rules 2 and 4 and order 7, Rule 1 (b) Code of Civil Procedure. There is a distinction amongst the 'grounds' in Section-81 (1), the 'material facts' in Section 83 (1) (a) and "full particulars" in Section 83 (1) (b).

11. Referring to the importance of pleadings a learned author says :

"Pleadings do not only define the issues between the parties for the final decision of the court at the trial, they manifest and exert their importance, throughout the whole process of the litigation..... They show on their face whether a reasonable cause of action or defence is disclosed. They provide a guide for the proper mode of trial and particularly for the trial of preliminary issues of law of fact. They demonstrate upon which party the burden of proof lies, and who has the right to open the case. They act as a measure for comparing the evidence of a party with the case which he has pleaded. They determine the range of the admissible evidence which the parties should be prepared to adduce at the trial. They delimit the relief which the court can award...."

(See : Jacob. "The Present Importance of Pleadings" (1960) Current Legal Problems at pp 175-76).

12. Further, the distinction between "material facts" and "full particulars" is one of degree. The lines of distinction are not sharp. "Material facts" are those which a party relies upon and which, if he does not prove, he fails at the time.
13. In Bruce v. Odhams Press Ltd (See : Pleadings Vol. 36 para 38) Scott L. J. said : "The word 'material' means necessary for the purpose of formulating a complete cause of action; and if any one 'material' statement is omitted, the statement of claim is bad". The purpose of "material particulars" is in the context of the need to give the opponent sufficient details of the charge set up against him and to give a reasonable opportunity.

14. Helshury refers to the function of particulars thus :

"The function of particulars is to carry into operation the overriding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly and without surprises, and incidentally to reduce costs. This function has been variously stated, namely, either to limit the generality of the allegations in the pleadings, or to define the issues which have to be tried and for which discovery is required".

15. In bullon and leake and Jacob's Precedents of pleading" 1975 Ldn. at p. 112 it is stated ;

"The function of particulars is to carry into operation the overriding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly and without surprises and incidentally to save costs. The object of particulars is to 'open up' the case of the opposite party and to compel him to reveal as much as possible what is going to be proved at the trial, whereas, as Cotton L. J. has said, 'the old system of pleading at commonlaw was to conceal as much as possible what was going to be proved at the trial.'"

16. The distinction between 'material facts' and 'particulars' which together constitute the facts to be proved—or the *facta probanda*—on the one hand and the evidence by which those facts are to be proved—*facta probantia*—on the other must be kept clearly distinguished. In *Philipps v. Philipps* (1978) 4 CB. D. 127,133 Brett, L. J. said:

"I will not say that it is easy to express in words what are the facts which must be stated and what matters need not be stated.... The distinction is taken in the very rule itself, between the facts on which the party relies and the evidence to prove those facts, Erle C. J. expressed it in this way. He said that there were facts that might be called the *allegata probanda*, the facts which ought to be proved, and they were different from the evidence which was adduced to prove those facts. And it was upon the expression of opinion of Erle C.J. that Rule 4 [now Rule 7 (1)] was drawn. The facts which ought to be stated are the material facts on which the party pleading relies".

17. Lord Denman, C. J. in *William v. Wilcox* (1938) 8 AD & EL, 331, said :

"It is an elementary rule in pleading that, when a state of facts is relied it is enough to allege it simply, without setting out the subordinate facts which are the means of proving it, or the evidence sustaining the allegations."

18. An election petition can be rejected under Order VII Rule 11 (a) C. P. C. if it does not disclose a cause of action. Pleadings could also be struck out under Order VI Rule 16, *inter alia*, if they are scandalous, frivolous or vexatious. The latter two expressions meant cases where the pleadings are obviously frivolous and vexatious or obviously unsustainable."

24. In *Dr. (Smt.) Shipra v. Shri Shanti Lal* (A. I. R. 1975 Rajasthan 50) it has been held that with respect to corrupt practice the material facts and particulars have been given in para No. 10 and those grounds do not disclose the cause of action and the material facts and particulars have not been stated but his lordship came to the conclusion after perusal of the grounds taken in para 10 that the election petition did disclose some triable issue fit to be decided by the court and it was not a case of failure of the pleadings to disclose reasonable cause of action and the election petition filed by the petitioner, therefore, could not be dismissed at the threshold on this ground.

25. In the aforesaid citation (A. I. R. 1995 Raj. 239) (Mohammad Yusuf and another v. Bhairon Singh Shekhawat) the expression "material facts" has been explained and also how this expression is different from 'full particulars' Para 36 in this behalf of the aforesaid judgment is being referred hereunder :

"The material facts men (a) facts necessary to formulate a complete cause of action (b) all the preliminary facts which must be proved by the party to establish a cause of action, (c) the basic facts which constitute ingredients of particular corrupt practice, (d) all the facts which are essential to clothe the petitioner with complete cause of action, (e) the facts which if established would give the petitioner the relief asked for, (f) the facts on the basis of which the Court could give a direct verdict in favour of the election petitioner in case the returned candidate did not appear to oppose the petition (g) facts which if not proved, the petition must fail.

There is a difference between the 'material facts' and 'particulars'. The function of particulars is to present as full a picture of a cause of action with such information in details as to make the opposite party understand the case he will have to meet. There may be some overlapping between 'material facts' and 'particulars' but the two are quite distinct. The distinction is one of degree. The material facts are those which the party relies upon and which if it does not prove, he fails.

Mere reproduction of the words of the statute would not be sufficient to maintain a petition. The facts which constitute the corrupt practice have to be set out and they must be correlated to one of the heads of the corrupt practices.

Whether in an election petition a particular fact is material or not and as such required to be pleaded or not depends on charges levelled and the circumstances of the charges levelled and the circumstances of the case. Thus decision of each case would depend on the facts and circumstances of that case.

An election petition can be summarily dismissed if it does not furnish a cause of action. If the mandatory requirements of Section 83 of the Act are not fulfilled, appropriate order under Order VI, Rule 16 and under Order VII, Rule 11 of the Code of Civil Procedure can be passed. *The whole purpose of conferring such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and exercise mind of the respondent.* The sword of Damocles need not be kept hanging over his head without point or purpose. Since the Court has the power the power to at the threshold the power must be exercised at the threshold itself in case the Court is satisfied that it is a fit case for the exercise of such power and that exercise of such power is warranted under the relevant provisions of law.

"An election petition cannot be dismissed in limine for want of particulars without give an opportunity to the petitioner to supply better particulars".

25. (A) In *Pramila Nesargi (Smt.) v. C. K. Jaffer Sharief and others.* [1994 supp (3) S.C.C. 170] it has been held that right to elect or to be elected or to challenge an election are neither a fundamental right nor a common law right but a statutory right and as such the law enacted by Parliament governs all such disputes and controversies. It has further been held in the said case that the burden of proof with respect to plea of corrupt practice is on the petitioner and the proceedings are quasi criminal in nature and, therefore, mere re-production of ground of corrupt practice contained in S. 123 of the Act amounted to vague pleadings. It has further been held that statement of material facts and setting forth of full particulars was essential to meet the requirement of Section 83 (1) (a) (b) of the Act.

26. Para 14 of *Neelalohithadasan Nadar v. George Mascrene and others* [1994 Supp (2) S. C. C. 619], has been referred on behalf of the learned counsel for the petitioner which runs as under :

"14. Another argument put forth by Mr. Prashant Bhushan was that the pleadings in the election petition were insufficient to justify inspection inasmuch as except for mentioning that there had been double voting by 19 persons nothing else was stated about the basis on which the election petitioner came to the conclusion that these names, which apparently had appeared twice in the electoral roll, belonged to one and the same person and that those persons had in fact voted twice. It was also commented that no material facts, in the form of affidavits by single persons or polling agents alleging that had seen and heard about those persons having voted twice was filed in support of the petition. It is maintained that in the absence of evidence of these particulars being pleaded as to the source of knowledge of double voting it was dangerous to allow enquiring into such an allegation on the bare allegation of double registration of votes and possible double voting. We have pondered over this matter but regretfully do not accept the argument of the learned counsel. If a name has been registered twice enabling a person to take the advantage of voting in two different polling stations, Section 62 mandates that if he polls both these votes then both votes are void. A void vote cast is a vote void *ab initio*. In the nature of things the void taint in the election would have to be traced to the election papers for without the bare oral evidence would be of no use, and at best would be word against word, making application of Section 62 (4) wellnigh impossible. If the election petition on some information, material or otherwise, is able to entertain the belief that a particular voter, double registered, is known to have voted twice, he can certainly plead to that fact on his own entertained belief and need not ordinarily resort to giving details of the sources of his information or knowledge or the entertainment of his belief because registration of double vote is by itself the starting point; the exercise of both votes being the second. The election petitioner had specifically mentioned and in clear-cut terms that 19 persons had double voted. The question was not resolvable merely on oral evidence whether they had or had not, except to put those persons into the witness box, hear their version and confront them with the election papers. The sphere of enquiry at that stage is to be voting and not for discovering the name of the person to whom the vote was cast. That inevitably has to be found out after double voting or impersonated voting has been found out leading to the new step to trace them and nullify them. On the pleading of the parties as such, on both sides, a case for inspection at the stage when it was done had been made out. We thus find no error committed in the approach of the High Court."

In *Roop Lal Sathi v. Nachhattar Singh* (A. I. R. 1982 S. C. 1559) paras 19,20 and 26 have been pointed on behalf of the petitioner which run as under :

- "19. As to the second question, there can be no doubt whatever that the High Court was not justified in directing that the averments in paragraphs 4 to 18 of the election petition be deleted on the ground that there was non-disclosure of material facts sufficient to give rise to a cause of action under Section 100 (1) (d) (iv) of the Act.
20. The order passed by the High Court directing the striking out of paragraphs 4 to 18 of the election petition can hardly be supported. It is not clear from the order that the High Court proceeded to act under order VII, Rule 11 (a) or under Order VI, Rule 16 of the Code in passing the order that it did. It is rightly conceded that the High Court could not have acted under Order VII, Rule 11 (a) of the Code. Where the plaint discloses no cause of action, it is obligatory upon the Court to reject the plaint as a whole under Order VII Rule 11 (a) of the Code, but the rule does not justify the

rejection of any particular portion of a plaint, Mulla's Civil Procedure Code, 13th Edn., Vol. 1 p. 755. It is, therefore, necessary to consider whether the order passed by the High Court justified under Order VI Rule 16 of the Code which reads as follows:

"16. Striking out pleadings.—The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading :—

- (a) which may be unnecessary, scandalous, frivolous; or vexatious; or
- (b) which may tend to prejudice, embarrass or delay the fair trial of the suit; or
- (c) which is otherwise an abuse of the process of the Court".

26. (A) There is distinction between "material facts" and "particulars". The word "material facts" show that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of plaint becomes bad. The distinction which has been made between "material fact" and "particulars" was brought out by Scott. L. J. in *Bruce v. Odmhas Press Ltd.* (1936) 1 K. B. 697 in that following passage:

"The cardinal provision in Rule 4 is that the statement of claim must state the material facts. The word "material" means necessary for the purpose of formulating a complete cause of action, and if any one "material" fact is omitted, the statement of claim is bad; it is "demurrable" in the old phraseology, and in the new is liable to be struck out "under Order XXV, Rule 4, *Philipps v. Philipps*, (1878) 4 OSD 127 or "a further and better statement of claim may be ordered under Order XIX, Rule 7.

The function of "particulars" under R 6 is quite different. They are not be used in order to fill material gaps in a demurrable statement of claim gaps which ought to have been filled by appropriate statements of the various material facts which together constitute the plaintiff's cause of action. The use of particulars is intended to meet a further and quite separate requirement of pleading, imposed in fairness and justice to the defendant. Their function is to fill in the picture of the plaintiff's cause of action with information sufficiently detailed to put the defendant on his guard as to the case he has to meet and to enable him to prepare for trial."

The dictum of Scott. L. J. in *Bruce's case*, supra, has been quoted with approval 'by this Court in *Samant N. Balakrishnan v. George Fernandez*, (1969) 3 S. C. R. 603 : (A. I. R. 1969 S. C. 1201), and while observing that the requirements of section 83 are mandatory, the distinction between material facts and particulars was brought out in the following terms (at page 1212 of A. I. R.).

"The word "material" shows that the facts necessary to formulate a complete cause of action must be stated. *Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action of action with such further information in detail as to make the opposite party understand the case he will have to meet.*" 1

Thus, the word "material" in material facts under Section 83 of the Act means facts necessary for the purpose of formulating a complete cause of action, and if any one "material" fact is omitted, the statement or plaint is bad; it is liable to be struck out. The function of "particulars" is quite different, the use of particulars is intended to meet a further and quite separate requirement of pleading imposed in fairness and justice to the returned candidate. Their function is to fill in the picture of the election petitioner's cause of action with information sufficiently detailed to put the returned

candidate on his guard as to the case he has to meet and to enable him to prepare for trial in a case where his election is challenged on the ground of any corrupt practice".

28. There is no dispute to the proposition that every case of the present nature has to be decided in the context of the pleas raised therein insofar as the issue of reasonable cause of action having been not disclosed by the petitioner, is to be considered. The ratio of the aforesaid cited cases could only be made a guiding factor in the circumstances of a particular case especially when those propositions, enunciated in every case have been so done taking into consideration the facts involved in that case. However, the fact remains that in certain cases which may be exceptional one where the petition can be finally disposed of at the initial stage in case it is so warranted by law and the provisions of the Act. It may not be out of place to mention here, as has already been referred in the aforesaid cited precedents that the election petition of the present nature has to be disposed of within the ambit of various provisions of the Act and that too in accordance with law.

29. Needless to say where the pleadings, as averred in the petition, can disclose a reasonable and enforceable cause of action and that has not suffered from disclosing material facts and the court comes to the conclusion that *prima facie* the pleadings disclose a case to be tried on merit, the petition has to be so disposed of after affording the parties opportunity to support their case by leading evidence. On the other hand in case the court comes to the conclusion that whatever pleas have been taken, more so pertaining to factum of corrupt practice as is the case in the present petition, those pleadings suffer from disclosure of material facts as required, under law, to be alleged & pleaded specifically the petition on that ground can be disallowed at this stage so that the parties, especially the respondent is saved from unnecessary trial on merit.

30. It has to be decided at this stage, whether the pleas raised in the petition fulfilled legal requirement of the Act and whether without fulfilling that requirement of the Act, the petition can proceed further by recording evidence on behalf of the parties or it would be futile exercise to ask for the parties to support their claim and counter claim by legal evidence especially when the pleas raised in a way do not include and contain essential facts on the basis of which the evidence has to be examined. If the facts pleaded are vague and not specific and in that background it would not be legally proper to leave to the petitioner to examine evidence on a fact which has not been specifically pleaded. Otherwise also, the specific pleadings required to be taken under the Act should be of such a nature so as to afford opportunity to the contesting respondent to know about the material facts which he is required to rebut by leading evidence. In case the pleas of the petitioner do not conform to all these tests, in that event it may not be legally useful to continue with the proceedings.

31. Section 86(5) of the Act, as reproduced above, has been referred on behalf of the petitioner with the submission that at the maximum it may be said that material particulars have not been provided in the petition and for that purpose the court can ask the petitioner to do the needful. Again, that aspect of the matter has to be considered within the ambit of Section 86 (5) of the Act. This provision empowers this court to allow the particulars of any corrupt practice alleged in the petition, to be amended in such a manner as may in its opinion be necessary for ensuring fair and effective trial of the petition. However, in the very next sentence, it has been provided, "but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition". So it is only with this rider that better particulars could be asked for. In case the better particulars being asked for introduce some new particulars of corrupt practices which could have been earlier averred in the petition, such an opportunity under the law, cannot be granted in favour of the petitioner.

32. Now the pleas of the petitioner regarding the alleged corrupt practices can be appreciated in order to come to a definite conclusion whether the petition discloses a reasonable and

enforceable cause of action or not ? and whether the petition suffers from alleging material facts material particulars or not ?

33. The petitioner's simple case has been that the respondent has committed corrupt practice, as per Section 123 (6) of the Act by incurring or authorising expenditure in contravention of Section 77 of the Act. Under Section 77 of the Act, the maximum limit of election expenditure, as prescribed for the elections of Lok Sabha in Himachal Pradesh was Rs. 4.15,000 for each parliamentary constituency.

According to the petitioner the respondent has violated the provisions of Section 77 of the Act as he has exceeded the aforesaid limit. The instances alleged in the petition for the alleged corrupt practices have been already detailed above but in nutshell are as under :—

1. The amount spent for leasing Helicopter for canvassing purpose :
2. The amount spent on various publications published in newspapers, referred to earlier.
3. The amount spent for lunch of election agents on the date of counting :
4. Amount spent on telephones .

34. According to the petitioner, the aforesaid amounts have not been counted for though spent by the respondent, hence there is a violation of Section 77 of the Act and as a consequence thereof the respondent has been charged for the commission of corrupt practices, as per Section 123 (6) of the Act.

35. As per pleadings of the petitioner, the respondent had spent a sum of Rs. 3,55,000 towards charges for hiring of helicopter while in the return only an amount of Rs. 32,292 had been shown by the respondent. It has also been pleaded as pointed out earlier, that Rs. 32,292 is shown as expenditure on the basis of voucher No. 45, which actually showed that the amount was Rs. 39,292 which was to be credited in the account of the respondent as expenditure incurred towards use of helicopter for Lok Sabha elections. Voucher No. 45, has been annexed as Annexure P 3 to the petition. Any way, this variation of the amount, as per Annexure P 3 (voucher No. 45) will not in any way affect the case of the respondent especially when the amount is based upon voucher No. 45 which actually was Rs. 39,292 and not Rs. 32,292. However, the main plea is that the amount spent has been Rs. 3,55,000 on helicopter by the respondent.

36. How this amount of Rs. 3,55,000 has been calculated by the petitioner is evident from the pleadings itself. The petitioner has relied upon the information given on the floor of the Himachal Pradesh Vidhan Sabha pertaining to some starred question on 11-1-1996 by the Chief Minister. On the basis of the same it has been calculated keeping in view the time period for which the helicopter remained in the Constituency of the respondent. The amount alleged to have been charged has been calculated at the rate of Rs. 900.00 per hour and also the charges for the remaining period have been calculated on the basis of the said information.

37. It may be pointed out here that arithmetical calculations have been made the base for arriving at the figure of Rs. 3,55,000 as having been spent by the respondent on this account. Can this court, on the basis of these calculations made in the petition, come to a definite conclusion that such and such amount was spent by the respondent without there being any pleading averred by the petitioner with respect to details of this amount or the source thereof from where he got this information regarding the spending of this amount on helicopter by the respondent exclusively as per the law laid down and as per the provisions of the Act. I am of the considered view that without elaborating and making out additional material facts, the plea raised by the petitioner, as referred to above, cannot be put to trial. In case it is so done now it would amount

to giving an opportunity to the petitioner to fish out the evidence in order to support this allegation without there being any plea for proving those facts.

38. It may not be out of place to mention here that the petitioner knew, as has been pleaded, by him that the helicopter had been taken on lease from M/s Masco Airlines, New Delhi, for a period of two years from 25-5-1995. As already pointed out there is no allegation made in the petition as to from where the information has been received by the petitioner regarding the spending of the aforesaid amount on the helicopter by the respondent. The facts to that effect could have been easily pleaded had those been verified. There is no allegation in the petition that the petitioner approached the said Company with respect to the payment of lease money for the said period when the helicopter was used in the constituency of the respondent. There is no allegation in the petition that the said Company informed that such and such amount has been received for that purpose from such and such person, either from the party or from some individual. There is absolutely no allegation in the petition that in case the amount was paid by the Congress party, whether in that event the respondent made that payment to the Congress party whereby it could be pleaded that it was the respondent who had spent that amount. In case the information was that this amount was paid by some private individual apart from the respondent, whether the respondent made that payment to that private individual.

39. The petitioner, as such, has made a sweeping and general statement that the respondent had spent such and such amount on helicopter which was not counted in the expenditure statement submitted by him.

40. It is an admitted proposition of law that the requisite facts and detailed particulars of each corrupt practice with exactitude, have to be mentioned. A vague and general statement that the returned candidate spent such and such amount would not be sufficient to constitute corrupt practice. The essence of the matter is that "whatever money was spent." 'whose money it was which was spent' and in case it was the money of the respondent, the plea in that regard should be there not of geneal nature but to be more specific.

41. "Material facts" mean all the basic facts constituting ingredients of particular corrupt practice alleged, which the petitioner is bound to substantiate before he can succeed on this charge. In the present case in order to prove the fact that the respondent spent such and such amount for hiring helicopter, the petitioner was required to have pleaded some material facts before he was allowed to lead evidence. He cannot be allowed to collect evidence to prove this plea which evidence is to be looked for to substantiate certain material facts. The opposite party cannot be taken by surprise to rebut such an evidence which is not based and reflected from the pleadings. In the present case, as pointed out earlier, those allegations were required to have been made as a part of pleadings, which have not been made in this case. A general type of plea which is not specific can safely be said to be vague one and it will not constitute a reasonable cause of action as per the provisions of the Act. The various provisions in the Act have been provided with specific purpose so as to consider all these aspects at the threshold of the proceedings and in case the material facts of corrupt practice are lacking, as per provisions of the Act, the petition, is not to be proceeded further.

42. It has been very forcefully contended on behalf of the petitioner that at the first instance material facts and material particulars are therein the petition but even if the court is of the opinion that the petition is lacking material particulars, that aspect can be asked for under section 85(5) of the Act by way of amendment of the petition. It may be referred here that in the present case, it would not be legally possible to do so, as Section 86(5) of the Act prohibits such a course as the same would have the effect of introducing particulars of corrupt practice, not previously alleged in the petition.

43. Those material facts which are lacking in the petition, as pointed out earlier, could have been pleaded when it was filed. The petitioner could collect those informations from the private Company owning the helicopter. Admittedly, there is no allegation that the Company was approached but it declined to supply such information.

44. The plea of spending Rs. 3,55,000 for hiring helicopter by the respondent is directly connected with the alleged payment made to the Company which owned the helicopter. There is absolutely on plea raised by the petitioner as to what was the actual amount paid to the Company owning the helicopter on account of use of the helicopter for the period referred to in the petition. What were the dates on which the aforesaid amount was paid to the Company and by whom and on whose behalf the amount was paid, is not known. All these essential facts are lacking in the petition.

45. Thus, taking into consideration the facts of this petition, as reflected in the pleadings of the petitioner, coupled with the law discussed above, in so far as the amount spent on hiring helicopter as pleaded by the petitioner, it does not disclose any reasonable enforceable cause of action and the pleadings suffer from disclosing material facts in this behalf.

46. Likewise with respect to amount, alleged to have been spent by the respondent for getting the advertisements published in the newspapers, the pleadings in this behalf again suffer from disclosing a reasonable cause of action and also suffer from pleading material facts. The case of the petitioner in this behalf has been that in his return of expenditure the respondent disclosed an amount of Rs. 13,770, alleged to have been spent by him on publishing advertisements in the newspapers. but as a matter of fact, according to the petitioner, the respondent spent an amount as detailed in para 10 of the petition thereon.

47. Again, the petitioner has calculated this amount by applying some arithmetical formula. As per case of the petitioner, the amount spent and as detailed in this para 10 of the petition was pertaining to the advertisements published in various newspapers referred in that para on behalf of the Congress Party. Those advertisements have been looked into and those do not pertain to the respondent alone but for other Constituencies also. Various bills filed with the petition and the alleged published advertisements clearly disclosed that those were issued by the Permanent Secretary of Himachal Pradesh Congress Committee and those pertained to various constituencies with respect to the programme of the Chief Minister. What the petitioner has done is that the total amount has been divided amongst the various constituencies and the amount which comes about the respondents Constituency, has been inferred to have been spent by the respondent for those advertisements. Again, such a plea is not only vague incomplete but uncertain also, more so not being a specific one. A general statement has been made that the share of the respondent calculated by the petitioner was the actual amount spent by the petitioner which comes to be Rs. 1,47,309 and not be Rs. 13,770 as disclosed by the respondent in his expenditure statement. There is no plea at all raised by the petitioner that the respondent made payment of Rs. 1,47,309, being attributed against his name, either to the owners of the papers directly or through the Congress Party. Not only the plea, no details to that effect have been made. Simply because by arithmetical means some amount has been calculated by the petitioner, it cannot be said to have been actually spent by the respondent on those advertisements without their being specific plea in this regard. Again, at the cost of repetition, it may be very specifically pointed out here that on the aforesaid pleas, as they stand, no relief, as prayed for, can be granted in favour of the petitioner unless and until there are specific pleas that the payment was made by the respondent either to the press directly or through the party and the parties name in the advertisement was a misnomer. Section 77 of the Act provides for exclusion of the the expenditure made by the party or some private individual for the candidate. As per the plea, the amount spent was in the name of the party and in this background the plea being raised will not even help the case of the petitioner at this stage for disclosing a reasonable and enforceable cause of action.

48. The plea raised in para 12 of the petition, as detailed above, again will not be of any help to the case of the petitioner even at this stage. Again a mathematical calculation has been made to arrive at the figure of Rs. 6,300 having been spent by the respondent which amount, according to the petitioner, has not been shown by him in his expenditure statement. This plea also suffers from not disclosing material facts in this behalf. The names of the counting agents have not been pleaded. Only the numbers have been given. There is no allegation that these counting agents received receipt from the Asstt. Returning Officer for payment made by them for lunch, tea and dinner which they had taken at that particular time. There is no plea that the petitioner got this information from the Asstt. Returning Officer and he was basing the plea on the basis of that information. There is no allegation that the petitioner asked the Returning Officer as to who were the persons who had taken lunch etc. on payment of Rs. 30. There is no plea to find out whether receipts in this behalf were issued by the Asstt. Returning Officer or not. In case the plea raised was that this information was asked for by the petitioner from the Asstt. Returning Officer and the said officer had refused to give that information in that event such a plea should have been there. So in order to appreciate the case within the ambit of corrupt practices such type of general statements have to be ignored at the very threshold of the case.

49. Last but not the least, the petitioner pleaded in the para 14 of the petition regarding the telephone expenses, alleged to have been incurred by the respondent against telephone No. 23909 installed in the building of M/s Mathra Dass and sons, known as "Zamindaran Di Hatti", at Hamirpur. Again, there is a general plea that the respondent got the aforesaid telephone installed in the aforesaid building. There is no plea that such telephone was installed by the authority on payment made by the respondent, there is no document filed as Annexure to the petition to that effect. A general statement has been made which will not serve the purpose of the petitioner so far as the present petition is concerned. It has been pleaded that the respondent has not shown the telephone charges in the expenditure statement as required. It is further pleaded that the exact amount of telephone expenses could be calculated on the basis of the difference in the telephone bill during the election and six months prior to that on average basis. I think such a plea with respect to the amount actually spent by the respondent has to be ignored at this stage, being general in nature and not specific at all. Until today the amount alleged to have been spent in this regard by the respondent, has not been brought to the notice of the court. Again, on the basis of some assumptions and not the basis of mathematical calculations, the petitioner wants to base his plea of corrupt practice and not on specific material facts.

50. It may not be out of place to mention here that the plea of corrupt practice cannot be averred or alleged in the petition on the basis of mathematical calculations and mathematical derivations but the facts constituting the same have, at the first instance, to be specifically pleaded in the petition in accordance with the provisions of the Act. All the pleas raised in the petition, as discussed above, have been based upon some arithmetical calculations. This will not absolve the petitioner from initial liability to plead each and every fact specifically in this behalf.

51. It has been argued on behalf of the petitioner that even if a weak case is made out on the basis of the pleadings, it has to be tried on merit. Needless to say, it is not the stage where weakness or strength of the petitioner's case can be appreciated. That stage would come when the parties are put to trial to prove the issues on merit and they lead evidence. It is not weak or strong case of the petitioner which is to be looked into at this stage. At the initial stage the only aspect to be looked into is whether the pleas have been taken in accordance with the provisions of the Act and in that background whether those pleas are such so as to put them to trial. Where pleas, under the law, suffer from legal defect, they cannot be put to trial at all, so, the weakness or the strength of petitioner's case on merit at this stage is irrelevant.

52. It may be pointed out here that the petitioner has verified the particulars of paras 7 to 14 on his personal knowledge and if it was so, the information reflecting full particulars with complete facts would have been ventilated from the pleas taken in this behalf. The personal knowledge cannot be attributed to vague and sweeping statements which are not specific at all.

53. Thus, taking into consideration the over-all aspects present in this case the alleged facts constituting corrupt practices as pleaded do not disclose any reasonable and enforceable Cause of action and the same suffers and disclosing material facts particulars. The relief asked for on the basis of the aforesaid pleas which have been based on some arithmetical derivations, cannot be granted in favour of the petitioner. That being so, this issue is decided in favour of the respondent.

54. In view of the findings on the aforesaid issue, the present election petition, at this stage, is dismissed. As the petition is being disposed of on preliminary issues, parties are left to bear their own costs.

55. The Registry is directed to communicate the substance of the decision to the Election Commission and the Speaker of the Lok Sabha and also send to the Election Commission of India, an authenticated copy of this judgement in accordance with the provision of Section 103 of the Act.

10th June, 1997. (1S)

A. L. VAIDYA,
Judge.

नियन्त्रक, मुद्रण एवं लेखन सामग्री, हिमाचल प्रदेश, शिमला-5 द्वारा मुद्रित तथा प्रकाशित ।